

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Eastern Illinois Christian Broadcasting, Inc.) Facility I.D. No. 12485
NAL/Acct. No. MB200741410320
Licensee of WEIC(AM)) FRN: 0005000088
Charleston, Illinois) File No. BR-20040727ACZ

FORFEITURE ORDER

Adopted: March 1, 2011

Released: March 2, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of one thousand, three hundred dollars (\$1,300) to Eastern Illinois Christian Broadcasting, Inc. ("Licensee") licensee of WEIC(AM), Charleston, Illinois ("Station"), for its willful and repeated violation of Section 73.3526 of the Commission's Rules ("Rules")1 by failing to retain all required documentation in the Station's public inspection file.

II. BACKGROUND

2. On May 3, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of ten thousand dollars (\$10,000) to Licensee for these violations.2 As noted in the NAL, Section III, Item 3 of the Station's license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 had been placed in its station's public inspection file at the appropriate times. Licensee indicated "No" to that Item, explaining in an exhibit to the application that the issues/programs lists were missing from the Station's public inspection file for 1996; 1997; quarters 3 and 4, 1999; quarters 2 and 4, 2001; quarters 1 and 2, 2002; quarter 4, 2003; and quarter 1, 2004. Licensee stated, however, that the public file was now available and was regularly updated by "FCC Counsel."3 Licensee submitted a response to the NAL on July 31, 2007 ("Response").4

3. In its Response, Licensee asserts that the proposed forfeiture should be cancelled due to its inability to pay and supplied federal tax returns for the years 2004, 2005, and 2006.5

1 See 47 C.F.R. § 73.3526.

2 See Eastern Illinois Christian Broadcasting, Inc., Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 8449 (MB 2010).

3 See captioned application at Exhibit 11.

4 The Response was filed nearly two months late; however, for purposes of a complete record, we accept it and address the arguments therein.

5 Response at Exhibit 2.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁶ Section 1.80 of the Rules,⁷ and the Commission’s *Forfeiture Policy Statement*.⁸ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁹

5. Licensee argues that the forfeiture should be cancelled because it is unable to pay the forfeiture.¹⁰ The Commission will not consider reducing or cancelling a forfeiture in response to inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflect the licensee’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹¹

6. In general, a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture.¹² In some cases, other financial indicators such as net losses may also be relevant,¹³ but if gross revenues are sufficiently great, the mere fact that a business is operating at a loss does not by itself mean it cannot afford to pay.¹⁴ In 2004, 2005, and 2006, Licensee reported gross revenues of \$24,750, \$21,645, \$32,802 respectively. The proposed \$10,000 forfeiture represents 37 percent of Licensee’s average gross revenue for 2004-06. In considering claims of financial hardship, we have found a forfeiture amount of five percent of gross revenue reasonable,¹⁵ and the Enforcement Bureau has found that a forfeiture as high as 7.9 percent of the violator’s gross revenue was not excessive despite claims of financial hardship.¹⁶ Recognizing the financial burden of the proposed \$10,000 forfeiture, we reduce the forfeiture amount to \$1,300, or approximately five percent of Licensee’s average gross revenues for the three-year period prior to issuance of the *NAL*.¹⁷

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ Response at 1.

¹¹ See *NAL*, 22 FCC Rcd at 8453.

¹² *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See *CARE Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 1411 (MB 2010) (reducing amount of forfeiture to five percent where the proposed forfeiture amount would have constituted approximately 11 percent of Licensee’s average gross revenues).

¹⁶ See *Coleman Enterprises, Inc.*, Order of Forfeiture, 15 FCC 24385, 24389 (EB 2000), *recon. denied*, 16 FCC Rcd 10023, 10025 (2001).

¹⁷ See, e.g., *Grace Baptist Church*, Forfeiture Order, 25 FCC Rcd 7481 (MB 2010) (forfeiture reduced from 11.4 percent of licensee's average total revenue to five percent based on licensee's ability to pay).

7. We have considered Licensee's response and the record of this case in light of the above statutory factors, our Rules, and the Forfeiture Policy Statement. We conclude that Licensee willfully¹⁸ and repeatedly¹⁹ violated Section 73.3526 of the Rules.²⁰ However, for the reasons set forth above, we find that reducing the forfeiture to one thousand, three hundred dollars (\$1,300) is warranted.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,²¹ that Eastern Illinois Christian Broadcasting, Inc., SHALL FORFEIT to the United States the sum of one thousand three hundred dollars (\$1,300) for willfully and repeatedly violating Section 73.3526 of the Rules.²²

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²³ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).²⁴ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Maureen.McCarthy@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.²⁵

¹⁸ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-88 (1991) *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

¹⁹ Section 312(f)(2) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

²⁰ 47 C.F.R. § 73.3526.

²¹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

²² 47 C.F.R. § 73.3526.

²³ 47 U.S.C. § 504(a).

²⁴ *See* 47 C.F.R. § 1.1914.

²⁵ *Id.*

10. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested, to Eastern Illinois Christian Broadcasting, Inc., 2560 W. State Street, Charleston, Illinois 61920, and to its counsel, Richard J. Hayes, Jr., Esquire, P.O. Box 200, Lincolnville, Maine 04849.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau